No. 15087

# United States Court of Appeals

for the Ninth Circuit

SUN-MAID RAISIN GROWERS OF CALIFORNIA,

Appellant,

vs.

CALIFORNIA PACKING CORPORATION,

Appellee.

# Transcript of Record

**Appeal from the United States District Court for the** Southern District of California. Northern Division.



Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—5-4-56

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]


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## NAMES AND ADDRESSES OF ATTORNEYS

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JAMES MICHAEL,
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225 Bush Street,
San Francisco 4, California.

In the United States District Court for the Southern District of California, Northern Division

No. C-104-M

CALIFORNIA PACKING CORPORATION, a Corporation,

Plaintiff,

vs.

SUN-MAID RAISIN GROWERS OF CALIFORNIA, a Corporation,

Defendant.

## MOTION TO DISSOLVE INJUNCTION

Comes now defendant, Sun-Maid Raisin Growers of California, and moves this court to dissolve the injunction dated June 15, 1936, and issued by the Honorable Paul J. McCormick, pursuant to a final decree of the same date. Copies of said injunction and decree are attached hereto as Exhibits A and B.

This motion is made on the ground that no justification now exists for continuation of the injunction and defendant will be unjustly damaged as long as said injunction is in effect.

Said injunction was based upon the ownership, by plaintiff, California Packing Corporation, of the trade-mark Sun-Kist and was issued for the purpose of protecting certain rights residing in plaintiff at the date of said injunction by virtue of the ownership and use by plaintiff of said trade-mark.

Since said injunction issued, the trade-mark Sun-Kist has been abandoned by Plaintiff, and any rights to the trade-mark Sun-Kist have been assigned or [2*] transferred by plaintiff and no longer reside in plaintiff.

An affidavit of Earle G. Granger, Secretary of plaintiff, Sun-Maid Raisin Growers of California, in support of this motion is attached.

December 14, 1954.

BOYKEN, MOHLER & WOOD,

By /s/ GORDON WOOD,
Attorneys for Defendant.

Certificates of Service by Mail attached. [3]

*Page numbering appearing at foot of page of original Certified Transcript of Record.

## EXHIBIT A

In the United States District Court for the Southern District of California, Northern Division

In Equity No. C-104-M

CALIFORNIA PACKING CORPORATION, a Corporation,

Complainant,

vs.

SUN-MAID RAISIN GROWERS OF CALIFORNIA, a Corporation,

Defendant.

## WRIT OF INJUNCTION

United States of America,
Southern District of California—ss.

The President of the United States of America to Sun-Maid Raisin Growers of California, Its Agents and Servants, and All Claiming and Holding Through or Under It, Greeting:

Whereas, California Packing Corporation has filed on the equity side of the District Court of the United States for the Southern District of California, Northern Division, a bill of complaint against Sun-Maid Raisin Growers of California, and has obtained an allowance for an injunction as prayed for in said bill,

Now, Therefore, we having regard to the matters in said bill contained, do hereby command and strictly

enjoin you, the said Sun-Maid Raisin Growers of California, your agents and servants, and all claiming and holding through or under you, from using the trade-mark "Sun-Maid" otherwise than on packages containing raisins or on packages containing food products or confections made wholly or in part from raisins (nothing herein contained shall enjoin or restrain you, the said Sun-Maid Raisin Growers of California, from using your present corporate name), which commands and injunctions you are respectively required to [6] observe and obey perpetually.

Whereof, fail not under penalty of the law thence ensuing.

Witness, the Honorable Paul J. McCormick, Judge of the District Court of the United States for the Southern District of California, this 15th day of June, 1936, and in the 160th year of the independence of the United States of America.

[Seal] /s/ R. S. ZIMMERMAN,
Clerk of the District Court of the United States for the Southern District of California.

By EDMUND L. SMITH,
Deputy Clerk.

/s/ PILLSBURY, MADISON & SUTRO,
Attorneys for Complainant.

## EXHIBIT B

In the District Court of the United States for the Southern District of California, Northern Division

In Equity C-104-M

CALIFORNIA PACKING CORPORATION, a Corporation,

Complainant,

vs.

SUN-MAID RAISIN GROWERS OF CALIFORNIA, a Corporation,

Defendant.

## FINAL DECREE

The above-named California Packing Corporation, the complainant in the above-entitled cause, having duly appealed to the United States Court of Appeals for the Ninth Circuit from the final decree made and entered herein on the 26th day of March, 1934, dismissing the bill of complaint; the said United States Court of Appeals for the Ninth Circuit, having duly heard the said appeal upon the transcript of the record and having reversed the said decree of the District Court of the United States for the Southern District of California, Northern Division, with costs, and having ordered, adjudged and decreed that said complainant recover against said defendant $337.54 for its costs in said United States Court of Appeals for the Ninth Circuit and that it have execution

therefore; the said United States Court of Appeals for the Ninth Circuit having remanded the said cause to the said district court with instructions that this court take such further proceedings in conformity to the opinion and decree of said court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding, which order, decree, opinion and instructions appear to this court by the mandate of the said United States Court of Appeals for the Ninth Circuit. [4]

Now, Therefore, it is Ordered that said mandate be filed herein and spread upon the minutes of this court, and on reading and filing said mandate and in pursuance thereof,

It is Ordered, Adjudged and Decreed that this court, by virtue of the power and authority therein vested, and in obedience to the said mandate, doth order, adjudge and decree that the decree made and entered herein, dated March 26, 1934, be, and it is hereby, vacated and set aside; and

It is further Ordered, Adjudged and Decreed that an injunction issue herein perpetually enjoining and restraining the defendant, its agents and servants, and all claiming and holding through or under it, from using the trade-mark "Sun-Maid" otherwise than on packages containing raisins or on packages containing food products or confections made wholly or in part from raisins, provided that such injunction shall not enjoin or restrain defendant from using its present corporate name; and

It is further Ordered, Adjudged and Decreed that complainant have execution for its costs of appeal in the amount of $337.54, and that complainant take nothing in the way of damages against defendant but that complainant also recover its costs in this court taxed at $158.55.

Dated: June 15th, 1936.

/s/ PAUL J. McCORMICK,
United States District Judge.

Approved as to form, as Provided in Rule 44:

/s/ E. S. ROGERS,

/s/ MILLER & BOYKEN,
Attorneys for Defendant. [5]

## EXHIBIT C

(Transcript of Record, Exhibit 5, pp. 399-403)

This Agreement, made and entered into this 10th day of March, 1917, by and between California Associated Raisin Company, a corporation, party of the first part, and Griffin & Skelley Company, a corporation, party of the second part, and California Fruit Canners' Association, a corporation, party of the third part,

Witnesseth

Whereas, the party of the first part and the party of the third part, on or about the 10th day of Sep-

tember, 1913, entered into certain agreements and leases in writing, which, except as modified by subsequent correspondence between said parties, are still in force and effect, and are hereby referred to and made a part of this agreement, and which it is understood and agreed between the said parties shall so continue in force and effect until September 15th, 1918; and

Whereas, the party of the first part and the party of the second part, on or about the 16th day of July, 1913, entered into certain agreements and leases, which, except as modified by subsequent correspondence and agreements between said parties, are still in force and effect, and are hereby referred to and made a part of this agreement, and which it is understood and agreed between the said parties shall so continue in force and effect until July 1st, 1918; and,

Whereas, since the execution of said contracts, the parties of the second and third parts, together with the J. K. Armsby Company, a corporation, have transferred and conveyed to the California Packing Corporation certain of their properties, including their facilities for packing and marketing raisins, both said parties of the second and third parts and said J. K. Armsby Company, however, retaining their respective corporate identities; and [8]

Whereas, there is now pending in the United States District Court for the Southern District of New York, a suit in equity entitled "The J. K.

Armsby Company, Complainant, vs. Ernest L. Heebner and Archibald C. Clark, Defendants," involving the right of the party of the first part to use the trade-mark "Sun-Maid" in connection with the manufacture and sale of raisins, the J. K. Armsby Company claiming that such use by the party of the first part of said trade-mark is detrimental to The J. K. Armsby Company in the sale of raisins and other products, in that the name "Sun-Maid" was and is mistaken for and confused with the trade-mark "Sunkist" owned by The J. K. Armsby Company and used by it in connection with the sale of raisins, dried fruits and canned goods; and,

Whereas, said trade-mark "Sunkist," and all of the right of said The J. K. Armsby Company to use the same, and all of the interest of said The J. K. Armsby Company in and to the suit pending as aforesaid, have been transferred and assigned to said California Packing Corporation; and,

Whereas, the party of the first part desires that its right to use the said trade-mark "Sun-Maid" in connection with the packing and sale of raisins and food products or confections containing raisins shall be established as against said The J. K. Armsby Company, or its successors, or any one claiming through or under them, the right to use said trade-mark "Sunkist," and to that end to procure the dismissal of said suit; and,

Whereas, the parties of the second and third parts desire to procure the consent of the party of the first part to the employment by the parties of the

second and third parts of said California Packing Corporation as their manufacturing and selling agents for the purpose of fully carrying out the [9] provisions of the contracts and leases hereinbefore referred to;

Now, Therefore, in consideration of the premises and of the procurement by the parties of the second and third parts of the dismissal of the said suit pending in the United States District Court, in and for the Southern District of New York entitled "The J. K. Armsby Company, Complainant, vs. Ernest L. Heebner and Archibald C. Clark, Defendants," and the procurement by said parties of the second and third parts of an agreement on the part of said California Packing Corporation and The J. K. Armsby Company, that no claim shall be made hereafter that the trade-mark of the party of the first part, "Sun-Maid," when used in connection with the packing and sail of raisins and food products or confections containing raisins interferes with the trade-mark "Sunkist" formerly owned by said The J. K. Armsby Company and now owned by said California Packing Corporation, the party of the first part has agreed, and does hereby agree, that the contracts and leases now in force and effect between it and the parties of the second and third parts, respectively as above recited, shall continue in full force and effect until the respective dates of termination thereof above stated, notwithstanding the transfer by the parties of the second and third parts, or either of them, of their manu-

facturing and selling facilities to the said California Packing Corporation; and the party of the first part agrees that the parties of the second and third parts may employ the said California Packing Corporation as their agent for the purpose of packing and selling raisins, and otherwise carrying out the convenants of said contracts on their parts respectively to be performed.

And the party of the first part further agrees, in [10] consideration of the dismissal of said suit and the agreement to be procured from said The J. K. Armsby Company and California Packing Corporation as aforesaid, concerning the use of said trade-mark "Sun-Maid," that it, the party of the first part, will use the said trade-mark "Sun-Maid" only on packages containing raisins or on packages containing food products or confections made wholly or in part from raisins, and that said trade-mark when so used by the party of the first part shall always be accompanied by the name of the party of the first part, or the name "Associated Warehouse Company" as packer; provided however, that nothing herein contained shall be construed to limit the right of the party of the first part to sell or assign said trade-mark or to license other persons, firms, or corporations to use the same to the extent to which the party of the first part has the right to use the same under this agreement as against said The J. K. Armsby Company or said California Packing Corporation; and provided further, that nothing herein contained shall be construed to require said

The J. K. Armsby Company or California Packing Corporation to relinquish its use of the trade-mark "Sunkist" in connection with the packing and sale of raisins or other food products.

It is expressly understood and agreed that this agreement shall be of no force or effect until the parties of the second and third parts shall have procured and delivered to the party of the first part a copy of the order of court dismissing the action above referred to, duly certified by the clerk of the United States District Court, for the Southern District of New York, and shall also have procured from said The J. K. Armsby Company and California Packing Corporation the agreement concerning the use of said trade-mark "Sun-Maid" [11] above provided for; it being understood, however, that the approval of this agreement by said last-named corporations endorsed thereon shall be deemed to be a sufficient agreement on their part concerning the use of said trade-mark.

In Witness Whereof, the parties hereto, by their duly authorized officers, have executed this agreement and affixed hereto their respective corporate seals, the day and year first above written.

CALIFORNIA ASSOCIATED
RAISIN COMPANY,

By /s/ JAMES MADISON,
Vice-President,

By /s/ C. A. MURDOCH,
Secretary.

GRIFFIN & SKELLEY COMPANY,

By /s/ C. W. GRIFFIN.

CALIFORNIA FRUIT CANNERS' ASSOCIATION,

By /s/ S. L. GOLDSTEIN,
Vice-President,

By /s/ CHAS. B. CARR,
Secretary.

For and in consideration of the execution of the foregoing agreement by California Associated Raisin Company, the undersigned California Packing Corporation and The J. K. Armsby Company do hereby approve and adopt the same as their agreement insofar as the same relates to the use by said California Associated Raisin Company of the trademark "Sun-Maid."

Dated: This 10th day of March, 1917.

CALIFORNIA PACKING CORPORATION,

By /s/ J. K. ARMSBY,
President.

THE J. K. ARSMBY COMPANY,

By /s/ J. G. NEWTON,
Vice-President.

[Endorsed]: Filed December 16, 1954. [12]

[Title of District Court and Cause.]

No. C-104-M

## SUPPLEMENTAL AFFIDAVIT OF EARLE G. GRANGER

State of California,
County of Fresno—ss.

Earle G. Granger, being duly sworn, deposes and says that he is Secretary of Sun-Maid Raisin Growers of California, defendant in the above-entitled case; that at the time of trial of said case he was Assistant Secretary of defendant corporation and has been associated with defendant corporation since that time; that he was present at said trial and is familiar with the circumstances surrounding the suit by plaintiff, California Packing Corporation, against defendant corporation and has been cognizant of, and bound by, the injunction issued in said case by the Honorable Paul J. McCormick on June 15, 1936; that said injunction was based upon ownership and use by plaintiff, California Packing Corporation, of the trade-mark Sun-Kist; that to the best of affiant's knowledge and belief, plaintiff has abandoned the use of the mark Sun-Kist and no longer uses the trade-mark Sun-Kist on either raisin or non-raisin food products, and affiant has been advised and believes that the trade-mark Sun-Kist is no longer the property of plaintiff corporation, having been assigned with [15] the good will of the business pertaining thereto, to Sunkist Growers of

Los Angeles, California, for approximately $1,000,000; that affiant has advised Sunkist Growers of Los Angeles of defendant's desire to have said injunction dissolved and said Sunkist Growers of Los Angeles has informed affiant that the matter is one to be resolved between defendant and plaintiff, and that it desired neither to consent or object thereto; that, in the past, others have attempted, to the detriment of defendant, to use the word Sun-Maid or a colorable imitation thereof, on non-raisin food products; that similar instances of such unauthorized use of the name Sun-Maid are likely to occur in the future; that in affiant's opinion said injunction precludes defendants from taking all necessary preventive steps to stop such unauthorized use of defendant's name in the future.

[Seal] /s/ EARLE G. GRANGER,
Secretary.

Subscribed and sworn to before me this 18th day of January, 1955. Dorothy B. Landstrom, Notary Public in and for the County of Fresno, State of California.

[Endorsed]: Filed January 21, 1955. [16]

[Title of District Court and Cause.]

MEMORANDUM FOR ORDER

The decree here was entered pursuant to the Mandate of the Appellate Court and the Ninth Circuit has said that in such instance, "proper deference to its authority requires that a proceeding to reopen it, whether by rehearing or review, should first be referred to that tribunal." [Rogers v. Cons. Rock Products, (CCA 9, 1940) 114 F.2d 108, affirmed on other grounds 312 U.S. 510.] While that was a bankruptcy case, the authority cited for it was Simmons Company v. Grier Bros., 258 U.S. 82, 91, an injunction case which in turn cites other injunction cases.

Plaintiff's contention as to Rule 60(b) is disposed of adversely to them in Butcher & Sherrerd v. Welsh, (3 Cir. 1953) 206 F.2d 259, 262, Cert. den. 346 U.S. 925.

For the foregoing reasons the court does not act on the merits, but will direct a dismissal of the Motion for failure to comply with the above-mentioned requirements, upon presentation of a formal order to that effect. [13]

For benefit of counsel, the court wishes to observe the possibility that California Fruit Growers Exchange, as successor in interest of plaintiff, may be a necessary, or an indispensable party to any modification proceedings.

Dated: Los Angeles, California, this 20th day of January, 1956.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed January 20, 1956. [14]

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In the District Court of the United States for the Southern District of California, Northern Division

Civil Action No. C-104-M

CALIFORNIA PACKING CORPORATION, a Corporation,

Plaintiff,

vs.

SUN-MAID RAISIN GROWERS OF CALIFORNIA, a Corporation,

Defendants.

## ORDER DISMISSING DEFENDANT'S MOTION TO DISSOLVE INJUNCTION

The defendant's motion to dissolve the injunction heretofore entered by this Court on June 15, 1936, pursuant to mandate of the United States Court of Appeals for the Ninth Circuit having been noticed for hearing and heard on January 31, 1955; the defendant appearing by Gordon Wood, Esq., [17] and Messrs. Boyken, Mohler & Wood, and the plaintiff appearing by James Michael, Esq., and Messrs. Pillsbury, Madison & Sutro; briefs having been

submitted on behalf of the respective parties, and the Court having heard the arguments of counsel and being fully advised; and the Court having heretofore entered its memorandum for order dismissing said motion on January 20, 1956:

It is hereby Ordered that defendant's motion to dismiss injunction be and hereby is dismissed without prejudice.

Dated: Jan. 30, 1956.

/s/ PEIRSON M. HALL,
Judge of the United States District Court.

Approved as to form:

BOYKEN, MOHLER & WOOD,

GORDON WOOD,

By /s/ GORDON WOOD,
Attorneys for Defendant.

[Endorsed]: Filed January 30, 1956.

Docketed and entered January 31, 1956. [18]

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[Title of District Court and Cause.]

## NOTICE OF APPEAL

Notice is hereby given that Sun-Maid Raisin Growers of California, the above-named defendant, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order Dis-

missing Defendant's Motion to Dissolve Injunction entered in this action on January 31, 1956.

BOYKEN, MOHLER & WOOD,

GORDON WOOD,

By /s/ GORDON WOOD,
Attorneys for Defendant.

Dated: February 23, 1956.

[Endorsed]: Filed February 24, 1956. [19]

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[Title of District Court and Cause.]

## BOND FOR COSTS ON APPEAL

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to California Packing Corporation, plaintiff, the sum of two hundred and fifty dollars ($250.00).

The condition of this bond is that, whereas the defendant has appealed to the Court of Appeals for the Ninth Circuit by notice of appeal dated February 23, 1956, from the Order Dismissing Defendant's Motion to Dissolve Injunction entered January 31, 1956, if the defendant shall pay all costs adjudged against it if the appeal is dismissed or the judgment affirmed or such costs as the appellate court may award if the judgment is modified, then this bond is to be void, but if defendant

fails to perform this condition, payment of the amount of this bond shall be due forthwith.

SUN-MAID RAISIN
GROWERS OF CALIFORNIA,

By /s/ GORDON WOOD.

[Seal] AMERICAN BONDING COMPANY,

By /s/ ERBON DELVENTHAL,
Attorney-in-Fact. [20]

State of California,
City and County of San Francisco—ss.

On this 23rd day of February, 1956, before me Belle Jordon, a Notary Public, in and for the City and County and State aforesaid, duly commissioned and sworn, personally appeared Erbon Delventhal, known to me to be the person whose name is subscribed to the foregoing instrument as the Attorney-in-Fact of the American Bonding Company of Baltimore, and acknowledged to me that he subscribed the name of American Bonding Company of Baltimore thereto as Principal and his own name as Attorney-in-Fact.

/s/ BELLE JORDAN,
Notary Public in and for the State of California,
City and County of San Francisco.

My Commission Expires November 9, 1956.

[Endorsed]: Filed February 24, 1956. [21]

In the District Court of the United States, for the Southern District of California, Northern Division

No. C-104-M

CALIFORNIA PACKING CORPORATION, a Corporation,

Plaintiff,

vs.

SUN-MAID RAISIN GROWERS OF CALIFORNIA, a Corporation,

Defendant.

DEPOSITION

Be It Remembered, that on Wednesday, the 12th day of January, 1955, at 10:00 o'clock a.m., pursuant to the annexed Notice to Take Depositions Upon Oral Examination, at the offices of Messrs. Boyken, Mohler & Wood, 723 Crocker Building, San Francisco, California, personally appeared before me, H. L. Fly, a notary public in and for the City and County of San Francisco, State of California,

CHARLES GRIFFIN, JR.

a witness called on behalf of the defendant herein.

Messrs. Pillsbury, Madison & Sutro, represented by James Michael, Esquire, appeared as attorneys for the plaintiff; and

Messrs. Boyken, Mohler & Wood, represented by Gordon Wood, Esquire, appeared as attorneys for the defendant.

(Deposition of Charles Griffin, Jr.)

The said witness having been by me first duly cautioned [1*] and sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled cause, did thereupon depose and say as hereinafter set forth.

It was stipulated between counsel for the respective parties that the said deposition be reported by H. L. Fly, a duly certified reporter and a disinterested person, and thereafter transcribed by him into typewriting, to be read to or by the said witness, who, after making such corrections therein as may be necessary, will subscribe the same.

It was further stipulated that all objections to questions propounded to the said witness shall be reserved by each of the parties, save and except any objections as to the form of the questions propounded.

Mr. Wood: You might let the record show that this deposition is being taken in accordance with Rule 26 of the Federal Rules of Civil Procedure. [2]

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***Page numbering appearing at top of page of original Reporter's Transcript of Record.**

CHARLES GRIFFIN, JR.

a witness called on behalf of the defendant herein, being first duly cautioned and sworn by the notary public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Examination

By Mr. Wood:

Q. Would you state your name and residence, age and occupation?

A. Charles W. Griffin, Jr. Do you want the home address or business address?

Q. Home address.

A. 144 Woodland Way, Piedmont, California. Age, 53.

Q. What is your occupation?

A. Vice president, California Packing Corporation.

Q. Who is the president of your corporation?

A. Mr. Roy G. Lucks.

Q. Are you related to a C. W. Griffin?

A. My father.

Q. Was he an officer of the California Packing Corporation? A. He was.

Q. And prior to that time was he connected with the Armsby Corporation—is that the name?

A. No, he and his brother, Mr. Andrew Griffin, were the owners of the Griffin and Skelly Company.

Q. And what relationship is there between the Griffin and Skelly Company and the California Packing Corporation?

A. They were one of the four companies that

(Deposition of Charles Griffin, Jr.)

went together to form the California Packing Corporation in 1916.

Q. And what were the other companies? [3]

A. California Fruit Canners Association, Central California Canners or Canneries—I am not exactly sure—Central California Canners, I believe it was, and the J. K. Armsby Company.

Q. How long have you been with the California Packing Corporation? A. Since 1923.

Q. And how long have you been vice president?

A. Well, I feel a little embarrassed about this, to be perfectly frank, but I think it was 1947. I couldn't tell you exactly. I could get it for you.

Mr. Michael: If you require the accurate date, counsel, we will get it for you.

Mr. Wood: If it seems to be pertinent, we will go into it later.

Q. And prior to 1947 or thereabouts what position did you have with the company?

A. Well, actually I was in the Dry Fruit Buying Department.

Q. Are you familiar with the use by California Packing Corporation of the trade-mark Sunkist?

A. I think I am.

Q. By the way, is that name as used by California Packing Corporation hyphenated or is it one word? A. One word.

Q. Has it ever been used hyphenated?

A. Not to my knowledge.

Q. Could you tell me approximately when—may I refer to it as Cal Pac for short? A. Yes.

(Deposition of Charles Griffin, Jr.)

Q. Could you tell me when Cal Pac started to use the [4] trade-mark Sunkist?

A. I am sorry; I cannot. I actually don't know.

Q. Had the company used the trade-mark Sunkist for as long as you were associated with the company? A. Yes.

Q. And when were you first associated with the company? A. 1923.

Q. Could you tell me on what items the trade-mark was used by the company in the past?

A. Rather extensively in the canned fruit line and in the dried fruit line.

Q. And was it used on raisins? A. It was.

Q. Is the trade-mark Sunkist presently being used by Cal Pac? A. No, sir.

Q. When did they stop using that trade-mark?

A. I believe that the correct date is—I think it was 1950.

Mr. Michael: Counsel, I think you have a subpoena duces tecum served on the witness which called for an agreement respecting this matter, and if you care, I will submit it. I have both the original and the photostatic copy of the agreement dated September 20th, 1950, between California Packing Corporation and California Fruit Growers Association, and I think it is the document you are seeking under the subpoena duces tecum.

Mr. Wood: May I take a look at it?

(Mr. Michael hands documents to Mr. [5] Wood.)

(Deposition of Charles Griffin, Jr.)

Mr. Wood: Do you have the original of this document?

Mr. Michael: I have it here.

Mr. Wood: May I see it?

(Mr. Michael hands document to Mr. Wood.)

Mr. Wood: I didn't intend to get into this right now. I thought just a little later I might have a recess for ten or fifteen minutes so I could study this over if it is agreeable with you.

Mr. Michael: You suit yourself.

Q. (By Mr. Wood): This agreement is dated the 20th of September, 1950. Now, in answer to my previous question—would you read the last question?

(Question read.)

The Witness: May I say in answer to your question there that the agreement, as I understand it, was signed in 1950?

Q. (By Mr. Wood): What agreement is this you are referring to?

A. The agreement you have there.

Q. Perhaps we had better identify this agreement. Do you have a copy, or would you like to look at the original? A. I have it.

Q. Would you tell me by whom it is executed?

A. By the California Packing Corporation, by Ralph Brown, the vice president, and by Mr. N. Y. Hollister as secretary; by the California Fruit Growers Exchange, H. A. Lynn——

Q. Are you acquainted with Mr. Lynn?

(Deposition of Charles Griffin, Jr.)

A. I am not, sir—and as secretary, Paul S. Armstrong. [6]

Q. Now, I am not acquainted with the contents of this agreement yet, but do I understand it to be that Cal Pac discontinued the use of the word "Sunkist" about the time of the execution of this agreement? Is that correct?

A. Approximately so. There is a provision in the contract that would allow us to use any of the labels, cartons, boxes and so forth that we had in stock, using those Sunkist labels on any crops packed from the 1950 or prior crops—in other words, a provision to allow us to dispose of the stock of labels and boxes, cartons and so forth that we had on hand.

Q. Do you actually know how long it took to dispose of these? A. I do not, sir.

Q. Could you tell me, Mr. Griffin, that this agreement, dated September 20, 1950, was recorded in the patent office?

A. I cannot tell you, sir. I don't know.

Mr. Wood: Well, I really think at this point, if I may, I would like to take a recess for ten or fifteen minutes.

Mr. Michael: That's quite satisfactory.

(Recess taken.)

Mr. Wood: On the record.

Now, as I understand it, this original agreement comprises an authorization by the corporation that

(Deposition of Charles Griffin, Jr.)

Mr. Lynn be authorized to execute this agreement between California Packing Corporation and California Fruit Growers Exchange or Sunkist Growers of California. Is that correct?

Mr. Michael: I think it speaks for itself, [7] counsel.

Mr. Wood: Well, I want the record to show——

Mr. Michael: I will stipulate that attached to the agreement, dated September 20th, 1950, are copies of resolutions by the various corporations as certified to by the various secretaries or assistant secretaries showing that the parties who actually executed the document had authority to do so.

Mr. Wood: All right. Thank you.

Q. Now, Mr. Griffin, in this agreement Cal Pac is required to execute certain assignments of the trade-mark registrations on the mark Sunkist. Do you have these assignments with you?

A. I do not, sir.

Mr. Michael: I might say, counsel, as you see, Exhibit B attached to the agreement contains quite a long list of registrations. We didn't feel you were particularly interested in having copies of each of those. If there is any question about whether or not the documents called for were executed at some later time, we can check on that, and I will be glad to stipulate with you as to what the facts are.

Q. (By Mr. Wood): Preliminarily, I would like to know, was there just one main assignment that listed all these registrations listed in Exhibit B or was there an assignment for each registration?

(Deposition of Charles Griffin, Jr.)

A. I am sorry. I am not familiar with it.

Q. And you are not familiar with whether or not the assignments, if any, were recorded in the patent office? A. I am not.

Q. Who would know?

A. Probably the secretary of the [8] corporation down there would know.

Q. The secretary of the corporation?

A. Yes.

Q. And who is the secretary?

A. At the present time Mr. Croce.

Mr. Michael: Off the record, counsel.

(Unreported discussion.)

Mr. Wood: On the record.

Q. Now, Mr. Griffin, this agreement specifies a certain consideration of money payable by Exchange —that is, the California Fruit Growers Exchange. Could you tell me whether or not that consideration has been paid?

A. To the best of my knowledge it has been completely paid.

Q. Now, also in the agreement Cal Pac, as I understand it, is permitted or may be permitted—the agreement may be construed so as to permit Cal Pac to continue to use a trade-mark which includes the word "Sun." To the best of your knowledge, is Cal Pac employing a trade-mark at this time which includes the word "Sun"?

Mr. Michael: May I make an objection to the form of the question? I think it assumes construction of the agreement that may or may not be cor-

(Deposition of Charles Griffin, Jr.)

the case of California Packing Corporation versus Sun-Maid Raisin Growers of California?

The Witness: Off the record.

(Unreported discussion.)

Mr. Wood: On the record.

The date of the trial was a short time prior to 1936.

Mr. Michael: If you don't know, you don't know. Don't try to guess as to who might have some knowledge about the trial.

The Witness: Frankly, I just don't know. [11]

Q. (By Mr. Wood): How about this secretary you mentioned; what was his name?

A. Croce.

Q. And how long had he been secretary?

A. I believe it was about four years.

Q. Who was secretary prior to him?

A. Mr. Hollister. Mr. Hollister is dead.

Q. Getting back again to the use of the Sunkist trade-mark prior to the Sunkist agreement, was your use of the trade-mark domestic; in other words, were products sold in the United States bearing the trade-mark Sunkist? A. They were.

Q. Were they sold in foreign commerce, too?

A. They were.

Q. Was the foreign commerce involving the trade-mark Sunkist a large percentage or small percentage of the total use?

A. I couldn't answer that. I don't know.

Q. Who would be familiar with that?

(Deposition of Charles Griffin, Jr.)

A. Well, I assume that possibly that could be obtained from Mr. Croce.

Q. Prior to his assuming the office of secretary, what position did he have with the company?

A. He was with our Tax Department.

Mr. Wood: By the way, if I haven't done so, I want to introduce in evidence this copy of the agreement of September 20th, 1950; and it has been stipulated that a photostatic copy of the same may be employed and that said copy is an exact copy of the original agreement?

Mr. Michael: I will so stipulate. [12]

When you say you want to introduce it in evidence, what you mean, you want to have it marked and that you intend to offer it.

Mr. Wood: I want to offer it in evidence as our Exhibit 1.

Mr. Michael: I take it we have the usual stipulations as to the objections, and so forth. Therefore, it is not necessary for me to note my objection to the offer at this time.

Mr. Wood: You may object or not as you wish.

Mr. Michael: Well, if we do not have such a stipulation, I will object to the offer of the document at this time on the ground that it is incompetent, irrelevant and immaterial as far as the issues in this proceeding are concerned.

Mr. Wood: Isn't it true, counsel, we have stipulated that the photostatic copy which you have is a true copy of the original agreement?

Mr. Michael: I am perfectly willing to stipulate

(Deposition of Charles Griffin, Jr.)
that the photostatic copy is a true and correct copy of the original, and it may be reproduced and copies attached to the deposition, and any one of the photostatic copies may be used in the same manner that the original may be used at the hearing.

(Agreement above referred to marked Defendant's Exhibit No. 1.)

Mr. Wood: Counsel, are you going to be able to leave us another copy of this agreement? The reporter is going to take this one. I am going to give you back the original.

Mr. Michael: This is a negative copy, and the reporter [13] can have positive copies made and attach copies to the copies of the deposition.

Mr. Wood: How long would it take, Mr. Reporter, to get this back?

The Reporter: One day.

Q. (By Mr. Wood): Mr. Griffin, we are interested in getting some information on the extent of use by your company of the trade-mark Sunkist prior to the Sunkist agreement, and as you have testified you are not too familiar with the exact use, and as I understand your testimony, Mr. Croce would probably be familiar with such use?

A. I would assume.

Mr. Wood: I am wondering if Mr. Croce would be available to testify today?

The Witness: I doubt that now. He has been away; he handled some of these tax matters for

(Deposition of Charles Griffin, Jr.)

us, and whether he is there or not, I haven't the slightest idea.

Mr. Wood: I am wondering, counsel, whether you could agree to produce Mr. Croce within the next few days?

Mr. Michael: I am not prepared to enter into any stipulation right at the moment to produce any witness, counsel; and I don't say that for any reason of trying to harass or delay your preparation of your case here, but I simply don't know what the availability of these people is. If you are only interested in getting the statistics as to the use of the trade-mark, it seems to me you might approach that by a simpler avenue. You tell me what you want and I will get it for you. [14]

Mr. Wood: That sounds all right, and if it appears it would be better to have the testimony of someone who knows the situation, then we can go through the same thing again and get it. It just seemed to me that if Mr. Croce were available today we would like to have him here. We would naturally like figures on the amount of goods sold under the Sunkist trade-mark prior to the agreement of 1950.

Mr. Michael: In terms of percentage of the business of Cal Pac?

Mr. Wood: I think probably in terms of percentage and also in terms maybe of the gross amount of sales.

Mr. Michael: I am not sure that we will be willing to give you the latter. We might be willing to

(Deposition of Charles Griffin, Jr.)

give you the former; but let me explore the matter and I will let you know.

Mr. Wood: That's agreeable.

Mr. Michael: You are interested in what was in existence prior to the execution of this agreement?

Mr. Wood: Let's say five or ten years prior to the execution of the agreement, and I take it Mr. Croce could testify to that, despite the fact he has only been secretary for only five years.

Mr. Michael: I am not even sure if he is the witness that would have that information. I am not saying this critically of Mr. Griffin. He may be assuming that Mr. Croce, because he is secretary and has charge of the records, would be able to locate it. [15]

The Witness: He would have to dig up the information, but it's a question of who would present it. That's the reason I said Mr. Croce.

Mr. Michael: Do you want all this on the record?

Mr. Wood: Yes. We might go off the record now, if we may.

(Unreported discussion.)

Mr. Wood: On the record.

I think that is about all, and I certainly appreciate your coming up, Mr. Griffin.

/s/ CHARLES W. GRIFFIN, JR.

United States of America,
Northern District of California,
City and County of San Francisco—ss.

I hereby certify that on the 12th day of January, 1955, at 10:00 o'clock a.m., before me, H. L. Fly, a notary public in and for the City and County of San Francisco, State of California, at the offices of Messrs. Boyken, Mohler & Wood, 723 Crocker Building, San Francisco, California, personally appeared, pursuant to the annexed Notice to Take Depositions Upon Oral Examination, Charles Griffin, Jr., a witness called on behalf of the defendant herein; and Messrs. Pillsbury, Madison & Sutro, represented by James Michael, Esquire, appeared as attorneys for the plaintiff; and Messrs. Boyken, Mohler & Wood, represented by Gordon Wood, Esquire, appeared as attorneys for the defendant; and the said Charles Griffin, Jr., being by me first duly cautioned and sworn to testify the whole truth, and nothing but the truth, and being carefully examined, deposed and said as appears by his deposition hereto annexed.

And I further certify that the said deposition was then and there recorded by me, a duly certified and disinterested shorthand reporter, and was transcribed by me.

And I further certify that at the conclusion of the taking of said deposition, and when the testimony of said witness was fully transcribed, said deposition was submitted to and read by said witness and thereupon signed by him; and that the

deposition is a true record of the testimony given by said witness.

And I further certify that the exhibit hereto attached and [17] marked Defendant's Exhibit No. 1 is the exhibit referred to and used in connection with the deposition of said witness.

And I further certify that the said deposition has been retained by me for the purpose of securely sealing it in an envelope and directing the same to the Clerk of the Court as required by law.

And I further certify that I am not of counsel or attorney for either or any of the parties, nor am I interested in the event of the cause; I further certify that I am not a relative or employee of or attorney or counsel for either or any of the parties, nor a relative or employee of such attorney or counsel, nor financially interested in the action.

In Testimony Whereof, I have hereunto set my hand and official seal at the City and County of San Francisco, State of California, this 3rd day of February, A.D. 1955.

[Seal] /s/ H. L. FLY,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires Oct. 13, 1956. [18]

DEFENDANT'S EXHIBIT No. 1

Resolved that Ralph Brown, the senior vice president, and N. A. Hollister, the secretary of this corporation, be and each of them is hereby authorized and directed to execute and attest on behalf of this corporation and in its name the form of agreement attached hereto between this corporation and California Fruit Growers Exchange.

I hereby certify that the above is a full, true, and correct copy of the resolution passed by the Executive Committee of the Board of Directors of California Packing Corporation at its meeting on Monday, September 18, 1950, and the same is in full force and effect and has not been revoked.

I further certify that the bylaws of said California Packing Corporation expressly provide that during the intervals between the meetings of the Board of Directors of said corporation, said Executive Committee of the Board of Directors shall possess and may exercise all the powers of said Board of Directors in the management and direction of the operations of said corporation.

In Witness Whereof I have hereunto set my hand and affixed the seal of this corporation this 18th day of September, 1950.

/s/ N. A. HOLLISTER,
Secretary.

Resolved, that H. A. Lynn the president, and Paul S. Armstrong the secretary of this corporation, be and each of them is hereby authorized and directed to execute and attest on behalf of this corporation and in its name the form of agreement attached hereto between this corporation and California Packing Corporation.

I hereby Certify that the above is a full, true and correct copy of the resolution duly passed by the board of directors of California Fruit Growers Exchange at a regular meeting thereof duly and regularly convened and held on Wednesday, September 20, 1950, and that the said resolution is in full force and effect and has not been revoked.

It Witness Whereof, I have hereunto set my hand and affixed the seal of this corporation this 20th day of September, 1950.

[Seal] /s/ PAUL S. ARMSTRONG,
Secretary.

This Agreement, dated this 20th day of September, 1950, by and between California Packing Corporation, a New York corporation, with its principal office and place of business in the City and County of San Francisco, State of California, hereinafter referred to as "Calpack," and California Fruit Growers Exchange, a California corporation, with its principal office and place of business in the City of Los Angeles, State of California, hereinafter referred to as "Exchange";

Witnesseth:

Recitals

(a) Whereas there is now in effect between the parties a written agreement dated October 7, 1915, a copy of which, marked "Exhibit A," is attached hereto and by reference incorporated as a part hereof, which relates to the ownership by Calpack of the trade-mark "Sun-Kist" with respect to certain products and the ownership by Exchange of the trade-mark "Sunkist" for certain other products; and

(b) Whereas it is the desire of the parties hereto that said written agreement Exhibit A be forthwith terminated; and

(c) Whereas Calpack has agreed to sell, transfer and assign all its right, title and interest in and to said trade-mark "Sun-Kist," together with that part of the good will of the business of Calpack connected with the use of and symbolized by the mark, but not the good will connected with the use of and symbolized by any other trade-mark used in its business, and all domestic and foreign registrations relating to said trade-mark, a list of such registrations being attached hereto marked "Exhibit B" and by reference incorporated as a part hereof, and Exchange has agreed to purchase the same:

Now, Therefore, in consideration of the premises and the mutual promises of the parties hereinafter set forth, the parties agree as follows:

1. Calpack hereby sells, assigns and transfers to Exchange its entire right, title and interest in and to the trade-mark "Sun-Kist" and registrations thereof, together with that part of the good will of the business of Calpack connected with the use of and symbolized by the mark, but not the good will connected with the use of and symbolized by any other trade-mark used in its business. In effectuation of this sale, assignment and transfer, Calpack hereby agrees to make, execute and deliver an assignment in the form attached hereto and marked "Exhibit C," and such other individual assignments, in substantially the same form, as may be requested by Exchange, with such formal changes as may be required by the laws or regulations of the jurisdiction in which such assignment is to be recorded, transferring to Exchange each and every registration of the trade-mark "Sun-Kist," state, federal and foreign, in which Calpack has or purports to have an interest, including, but without limitation to, each and every of the registrations listed in the aforesaid Exhibit B. Said assignments shall be in proper form for recordation in the respective countries issuing said registration in accordance with the respective laws of said countries.

All of the aforesaid shall be done at the sole cost and expense of Calpack and without cost or expense to Exchange.

2. Calpack covenants and agrees that from and after the date hereof, except as in this Article 2 permitted, it will not in any way or manner use the

trade-mark "Sun-Kist" or any colorable imitation thereof, or any trade-mark incorporating the word "Kist" or any combination thereof, or any similar word, or any illustration having such implication, or any representation, in part or in whole, of a sunburst, in connection with the sale or distribution of any product, or in or upon any carton, box label, circular, advertisement, sign, billhead or letterhead, or in any slogan.

Exchange agrees that Calpack shall have such time as may be necessary within which to complete the distribution of its products labeled, or to be labeled, under the "Sun-Kist" mark, packed from the 1950 or prior crops.

3. Calpack covenants and agrees that it will at any time subsequent to the date hereof, on request of Exchange or its duly authorized agent, deliver to Exchange up to fifty (50) copies of each and every available carton, box, label, circular, advertisement, sign, billhead, letterhead and slogan on which appears the trade-mark "Sun-Kist" or the word "Kist" or any combination thereof, or any illustration having such implication, or any representation, in part or in whole, of a sunburst.

Calpack further covenants and agrees that it will at any time after January 1, 1951, on demand of Exchange or its duly authorized agent, deliver to Exchange or destroy, as may be directed by Exchange or its duly authorized agent, all cartons, boxes, labels, circulars, advertisements, signs, billheads, letterheads, plates or any other material on which

appears the trade-mark "Sun-Kist" or any colorable imitation thereof, or any trade-mark, or slogan incorporating the word "Kist" or any combination thereof, or any similar word, or any illustration having such implication, or any representation, in part or in whole, of a sunburst, except the goods referred to in the second paragraph of Article 2 hereof.

All of the aforesaid shall be without cost or expense to Exchange.

4. Calpack covenants and agrees that it will, at any and all times, upon the request of Exchange or its duly authorized agent, promptly deliver to Exchange the originals or, at Calpack's option, duly authenticated copies of all letters, correspondence, documents and agreements of every kind and character relating to the adoption of the trade-mark "Sun-Kist" and relating to all controversies and proceedings with others respecting the use of the trade-mark "Sun-Kist" or any colorable imitation thereof, or any trade-mark incorporating the word "Kist" or any combination thereof.

Calpack further covenants and agrees that it will, upon the request of Exchange or its duly authorized agent, promptly deliver to Exchange for its use each and every of its files respecting each and every suit, opposition or interference in which the trade-mark "Sun-Kist" was in any way involved or concerned, and each and every of its files with respect to each and every registration and application for registration of the trade-mark "Sun-Kist," and each

and every of its files respecting any abandonment by Calpack of or any failure to renew any registration of "Sun-Kist," or any cancellation proceedings respecting the same, and each and every of its files respecting the adoption and use of the trade-mark "Sun-Kist" or of any trade-mark or slogan in which the word "Kist" or any similar word or words, or illustrations having such implication, or any representation, in part or in whole, of a sunburst appears.

All of the same is to be furnished without cost or expense to Exchange.

5. Calpack covenants and agrees that it will, at the request of Exchange or its duly authorized agent, produce for use by Exchange all evidence and facts known, or which may become known to it relating to the adoption and use by Calpack and its predecessor of the trade-mark "Sun-Kist," and will produce such of its employees having knowledge of the facts, or having the custody or control of any evidence concerning the said adoption and use of the trade-mark "Sun-Kist," to testify respecting such facts in each and every interference and opposition and in each and every suit and proceeding in which said trade-mark "Sun-Kist" may now be or become involved or concerned.

All of the aforesaid to be done without cost or expense to Exchange other than reasonable cost of travel, hotel and subsistence incurred by any employee of Calpack requested by Exchange.

6. Nothing herein contained shall in anywise be construed as a guarantee or warranty on the part of Calpack as to the validity of its trade-mark "Sun-Kist" or the registrations therefor or as requiring Calpack to transfer or convey any physical assets.

7. The said agreement of October 7, 1915, is hereby terminated, cancelled and of no further force or effect.

Each of the parties hereto does, for itself and for its successors and assigns, remise, release and forever discharge the other, its successors and assigns, and any and all of the officers, directors, agents, attorneys and employees, or any one of them, of and from all claims of every kind, nature and character whatsoever against the other arising directly or indirectly out of or connected with said agreement dated October 7, 1915.

8. Exchange covenants and agrees to pay Calpack the sum of one million two hundred fifty thousand dollars ($1,250,000) in the following installments:

Two hundred fifty thousand dollars ($250,000) on or before November 1, 1950;

Two hundred fifty thousand dollars ($250,000) on November 1, 1951;

Two hundred fifty thousand dollars ($250,000) on November 1, 1952;

Two hundred fifty thousand dollars ($250,000) on November 1, 1953; and

Two hundred fifty thousand dollars ($250,000) on November 1, 1954;

as and for the full purchase price and compensation for said trade-mark and the rights hereunder conferred and the termination of the agreement of October 7, 1915, and all of the conditions, rights and obligations of this agreement.

Deferred payments are not to bear interest.

In Witness Whereof, the parties hereto have duly executed this agreement by their respective officers thereunto authorized as of the day and year first hereinabove written.

[Seal] CALIFORNIA PACKING CORPORATION,

By /s/ RALPH BROWN,
Vice President.

Attest:

/s/ N. A. HOLLISTER,
Secretary.

CALIFORNIA FRUIT GROWERS EXCHANGE,

By /s/ H. A. LYNN,
President.

Attest:

/s/ PAUL S. ARMSTRONG,
Secretary.

Exhibit A

Whereas, The J. K. Armsby Company, a corporation of the State of Illinois, has used "Sun-Kist" as its trade-mark in connection with goods of the class hereinafter referred to as "groceries," comprising dried fruits, raisins, canned goods and many other articles sold by wholesale grocery houses, but not perishable fresh fruit or citrus fruit by-products; and said Company has registered its said trade-mark in the United States Patent Office in connection with many of the goods upon which it has used the same as aforesaid;

And Whereas, the California Fruit Growers Exchange, a corporation of the State of California, has used "Sunkist" as its trade-mark in connection with perishable fresh fruit, and particularly citrus fruit, and registered the same in the United States Patent Office as its trade-mark for many of the goods aforesaid in connection with which it has used the same;

And Whereas, in connection with the application upon which registration was made by the California Fruit Growers Exchange the Commissioner of Patents decided in substance that no interference existed between the uses or registrations of the mark aforesaid and it now appears that for several years the uses of "Sunkist" aforesaid have both continued on a very extensive scale, embracing very large distribution, accompanied by very large expenditures by both parties in popularizing their respective goods without material conflict or misconception and with the result that when used in con-

nection with groceries "Sun-Kist" in fact now indicates in the trade and to the public that the goods are the goods of The J. K. Armsby Company and when used in connection with perishable fresh fruit "Sunkist" now indicates in the trade and to the public the goods of the Exchange;

And Whereas, the parties hereto desire to record their understanding and agreement concerning the uses of said trade-mark with a view to avoiding any and all differences or conflict.

Now, Therefore, This Memorandum Witnesseth, that The J. K. Armsby Company and the California Fruit Growers Exchange recognizing the facts aforesaid have agreed and hereby agree as follows:

1. The California Fruit Growers Exchange recognizes the exclusive right of The J. K. Armsby Company to use its said trade-mark "Sun-Kist" on dried fruits, raisins, canned goods and other articles ordinarily sold by wholesale grocery houses, but not upon perishable fresh fruit or the by-products of citrus fruits.

2. The J. K. Armsby Company recognizes the exclusive right of the California Fruit Growers Exchange to use its said trade-mark "Sunkist" on oranges, lemons, grapefruit and all other perishable fresh fruit and upon citrus fruit by-products.

3. The J. K. Armsby Company and California Fruit Growers Exchange will continue to use "Sunkist" only upon the highest grade and quality of their respective goods and each will endeavor by lawful means to prevent the use of "Sunkist" in

connection with goods of low grade or inferior quality, although the goods may not be identical in kind with the respective goods of the parties hereto, if the goods are of a kind such that confusion may arise concerning their origin, so as to impair the value of "Sunkist" as a trade-mark to either The J. K. Armsby Company or the California Fruit Growers Exchange.

It is understood and agreed that the provisions hereof shall be applicable to and govern the rights and acts of the parties in all markets and countries into which their goods are or may be shipped.

In Witness Whereof, each of said corporations has hereunto caused its corporate name to be subscribed and its corporate seal to be affixed by its President and Secretary thereunto duly authorized, all done as of this 7th day of October, 1915.

THE J. K. ARMSBY
COMPANY,
(A Corporation),

By J. K. ARMSBY,
Its President,

By E. R. ARMSBY,
Its Secretary.

CALIFORNIA FRUIT
GROWERS EXCHANGE,
(A Corporation),

By F. Q. STORY,
Its President,

By H. VAN VLECK,
Its Asst. Secretary.

# EXHIBIT B

| Country | Reg. No. | Date | Expires |
|---|---|---|---|
| *U. S. Trade Mark Registration | 67,277 | Jan. 28, 1908 | Jan. 28, 1948 |
| " | 67,278 | Jan. 28, 1908 | Jan. 28, 1968 |
| * " | 67,478 | Feb. 4, 1908 | Feb. 4, 1948 |
| " | 96,082 | April 7, 1914 | April 7, 1954 |
| " | 96,385 | April 21, 1914 | April 21, 1954 |
| " | 96,770 | May 5, 1914 | May 5, 1954 |
| " | 96,929 | May 12, 1914 | May 12, 1954 |
| " | 99,835 | Sept. 22, 1914 | Sept. 22, 1954 |
| " | 101,121 | Nov. 17, 1914 | Nov. 17, 1954 |
| " | 101,439 | Dec. 15, 1914 | Dec. 15, 1954 |
| " | 102,354 | Feb. 9, 1915 | Feb. 9, 1955 |
| " | 104,684 | June 8, 1915 | June 8, 1955 |
| " | 113,219 | Oct. 10, 1916 | Oct. 10, 1956 |
| " | 114,322 | Dec. 12, 1916 | Dec. 12, 1956 |
| " | 281,093 | March 10, 1931 | March 10, 1951 |
| " | 281,094 | March 10, 1931 | March 10, 1951 |
| " | 301,278 | Feb. 21, 1933 | Feb. 21, 1953 |
| " | 304,659 | July 11, 1933 | July 11, 1953 |
| **U. S. Label Reg. | 16,770 | Feb. 4, 1913 | |
| ** " | 16,771 | Feb. 4, 1913 | |

| | | | |
|---|---|---|---|
| ** " | 16,772 | Feb. 4, 1913 | |
| ** " | 16,773 | Feb. 4, 1913 | |
| ** " | 16,774 | Feb. 4, 1913 | |
| ** " | 16,775 | Feb. 4, 1913 | |
| ** " | 16,776 | Feb. 4, 1913 | |
| ** " | 16,777 | Feb. 4, 1913 | |
| ** " | 16,778 | Feb. 4, 1913 | |
| ** " | 16,779 | Feb. 4, 1913 | |
| ** " | 16,780 | Feb. 4, 1913 | |
| ** " | 16,896 | April 1, 1913 | |
| ** " | 16,897 | April 1, 1913 | |
| ** " | 17,715 | May 26, 1914 | |
| ** " | 17,751 | June 2, 1914 | |
| ** " | 17,752 | June 2, 1914 | |
| ** " | 17,753 | June 2, 1914 | |
| ** " | 17,754 | June 2, 1914 | |
| California State Registration | 5,047 | May 9, 1911 | |
| " | 5,553 | April 27, 1912 | |
| " | 6,003 | March 5, 1913 | |
| Foreign Registrations | | | |
| *Argentine | 92,212 | Sept. 21, 1925 | Sept. 21, 1935 |
| Australia | 15,338 | July 23, 1913 | July 23, 1955 |
| Austria | 55,518 | March 6, 1913 | Being reinstated |
| Barbados | 130 | June 4, 1919 | Unlimited |

| Country | Reg. No. | Date | Expires |
|---|---|---|---|
| Belgium (Renewal of No. 18,145) | 46,240 | Oct. 3, 1913 | Unlimited |
| *Bolivia (Renewal of No. C-129) | A-675 | June 26, 1919 | June 23, 1939 |
| ***Burma | 397/19 | May 2, 1919 | Unlimited |
| *Brazil (Renewal of No. 4,349) | 29,040 | Nov. 9, 1914 | Feb. 24, 1945 |
| *Canada | 79/19518 | March 23, 1914 | March 23, 1939 |
| " | 78/19184 | Dec. 15, 1913 | Dec. 15, 1953 or Dec. 15, 1963 |
| " | 90/21862 | July 5, 1916 | July 5, 1956 or July 5, 1966 |
| " | 184/40661 | Oct. 2, 1926 | Oct. 2, 1951 |
| *Ceylon | 2,034 | Nov. 4, 1919 | April 29, 1933 |
| *Chile | 37,911 | June 11, 1926 | June 11, 1936 |
| * " | 37,912 | June 11, 1926 | June 11, 1936 |
| *China (Hong Kong) | 120/1919 | Aug. 20, 1919 | April 15, 1933 |
| China (Nanking) | 13,123 | Oct. 30, 1930 | Oct. 29, 1950 |
| China (Manchuria) | 12 | 1919 | Unlimited |
| China (Shanghai) | C.H. 15,604<br>Cons. 1,823 | Sept. 1914 | Unlimited |
| China (Tientsin) | C.H. 273<br>Cons. 18 | April 17, 1919 | Unlimited |
| *Costa Rica | 1,089 | April 15, 1919 | April 15, 1934 |
| Cuba | 33,059 | Nov. 10, 1917 | Nov. 9, 1962 |
| Czechoslovakia | 91,751 | June 2, 1920 | March 5, 1953 |
| Denmark | 219/1913 | March 29, 1913 | March 29, 1953 |

| | | | |
|---|---|---|---|
| Dutch East Indies | 26,302 | Sept. 19, 1916 | Aug. 13, 1956 |
| *Egypt | 262 | Feb. 9, 1935 | Feb. 9, 1945 |
| ***Federated Malay States | | June 23, 1919 | |
| Finland | 11,278 | Sept. 13, 1929 | June 22, 1950<br>Being renewed |
| *Fiji Islands | 1/140 | Aug. 13, 1919 | May 6, 1933 |
| France | 54,322 | April 22, 1918 | Dec. 17, 1962 |
| ***French Indo China | | April 11, 1920<br>Dec. 30, 1930 | |
| Germany | 171,051 | Dec. 22, 1922 | Dec. 30, 1942<br>Being renewed |
| Great Britain | 374,638 | May 22, 1917 | Sept. 8, 1958 |
| " | 547,364 | March 21, 1934 | Dec. 30, 1961 |
| *Guatemala | 1,740 | Feb. 15, 1922 | Feb. 15, 1932 |
| * " | 1,741 | Feb. 15, 1922 | Feb. 15, 1932 |
| *India | 1,051 | Sept. 26, 1918 | New appl'n. filed |
| " | Appl'n. 141,962 | Jan. 11, 1950 | Being processed |
| *Upper India | 110/19 | April 28, 1919 | New appl'n. filed |
| Ireland | 43,365 | Feb. 26, 1934 | June 3, 1961 |
| Italy | 85,610 | Nov. 21, 1913 | Sept. 29, 1963 |
| Japan (Korea) | 105,374 | July 14, 1919 | July 14, 1959 |
| Japan | 186,707 | Nov. 22, 1926 | Being reinstated and renewed |
| " | 186,811 | Nov. 26, 1926 | Being reinstated and renewed |

| Country | Reg. No. | Date | Expires |
|---|---|---|---|
| *Jugoslavia | 602 | Oct. 3, 1921 | Oct. 3, 1941 |
| *Mexico | 16,368 | March 25, 1919 | March 17, 1939 |
| Netherlands | 65,252 | Sept. 1, 1933 | Sept. 1, 1953 |
| Newfoundland | 743 | March 7, 1919 | Unlimited |
| *Nicaragua | 2,050 | Dec. 9, 1929 | Dec. 9, 1939 |
| Norway | 28,322 | April 15, 1940 | April 14, 1960 |
| Pakistan | Appl'n. 9,364 | Dec. 31, 1949 | Being processed |
| *Panama | 732 | March 9, 1921 | March 9, 1941 |
| *Peru | 666 (266/19) | June 10, 1919 | Sept. 4, 1939 |
| *Philippines | 1,661 | Oct. 16, 1914 | Oct. 16, 1944 |
| Philippines | Serial 827 | Nov. 26, 1948 | Being processed |
| *Poland | 8,655 | Oct. 5, 1925 | Oct. 5, 1935 |
| * " | 9,567 | Nov. 9, 1925 | Nov. 9, 1935 |
| *Porto Rico | 1,118 | April 8, 1921 | April 8, 1941 |
| *Portugal | 25,718 | July 13, 1922 | July 13, 1932 |
| * " | 25,719 | July 13, 1922 | July 13, 1932 |
| * " | 27,811 | July 19, 1922 | July 19, 1932 |
| * " | 28,947 | April 12, 1923 | April 12, 1933 |
| *Salvador | 542 | Oct. 24, 1919 | Oct. 24, 1934 |
| *Santo Domingo | 661 | May 24, 1919 | May 24, 1929 |
| *Siam | A-81 | Feb. 2, 1932 | Oct. 1, 1941 |
| *South Africa | 378/1919 | April 6, 1920 | |
| ***Straits Settlements | | May 30, 1919 | |
| Sweden | 43,976 | Oct. 16, 1913 | Sept. 17, 1954 |

| | | | |
|---|---|---|---|
| Switzerland | 98,682 | Sept. 20, 1940 | Sept. 20, 1960 |
| *Uruguay (Renewal of No. 9,814) | 21,514 | Nov. 22, 1920 | Nov. 21, 1940 |
| *Venezuela | 2,640 | Oct. 15, 1919 | Oct. 15, 1939 |

*Expired registration.

**Label copyright in name of The J. K. Armsby Co.

***Publication of claim of ownership rather than a registration.

## EXHIBIT C

Calpack hereby sells, assigns and transfers to Exchange its entire right, title and interest in and to the trade-mark "Sun-Kist" and the registration thereof, No. ....., together with that part of the good will of the business of Calpack connected with the use of and symbolized by the mark, but not the good will connected with the use of and symbolized by any other trade-mark used in its business.

[Endorsed]: Filed February 3, 1955.

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[Title of District Court and Cause.]

## CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 23, inclusive, contain the original

Motion to Dissolve Injunction;
Memorandum for Order;
Supplemental Affidavit of Earle G. Granger;
Order Dismissing Defendant's Motion to Dissolve Injunction;
Notice of Appeal;
Designation of Contents of Record on Appeal;

which, together with a full, true and correct copy of Bond for Costs on Appeal; and 1 volume of deposition of Charles Griffin, Jr., in the above-entitled

cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, all in the said case.

I further certify that my fees for preparing the foregoing record amount to $2.00, which sum has been paid by the appellant.

Witness my hand and the seal of the said District Court this 26th day of March, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk,

By /s/ CHARLES E. JONES,
Deputy.

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[Endorsed]: No. 15087. United States Court of Appeals for the Ninth Circuit. Sun-Maid Raisin Growers of California, Appellant, vs. California Packing Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed: March 28, 1956.

Docketed: April 4, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

15087

SUN-MAID RAISIN GROWERS OF CALIFORNIA, a Corporation,
Defendant-Appellant,

vs.

CALIFORNIA PACKING CORPORATION, a Corporation,
Plaintiff-Appellee.

## DEFENDANT-APPELLANT'S STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL

The points on which appellant, Sun-Maid Raisin Growers of California intends to rely in this Court in this case are as follows:

1. The Court erred in not granting defendant's Motion to Dissolve Injunction dated December 14, 1954.

2. The Court erred in holding that prior permission of the Court of Appeals was required to bring the Motion to Dissolve Injunction in the District Court.

BOYKEN, MOHLER & WOOD.
GORDON WOOD,

By /s/ GORDON WOOD,
Attorneys for Defendant, Sun-Maid Raisin Growers of California.

San Francisco, California.

Dated: April 3, 1956.

Certificate of Service by Mail Attached.

[Endorsed]: Filed April 4, 1956.